SYKT. PERNIAGAAN KEMBANGAN

v.

SYKT. PEMBENAAN RAJA LUTHFI

HIGH COURT MALAYA, KUALA LUMPUR
VC GEORGE J
[SUIT NO. C 1181 of 1982]
4 JUNE 1985

CIVIL PROCEDURE: *Solicitor's authority to act on client's behalf - Order 14 summary procedure - Defendants and Counsel both absent at the O. 14 application hearing - Final summary judgment entered - Defendants charged solicitors not briefed on defence - Solicitors filed defence after lack of response from defendants to letters by solicitors - Claim that defence was filed without the authority of the defendants - Allegation of fraudulent contract.*

M/s. P & Co., the defendants' previous solicitors, filed a statement of defence purportedly for and on behalf of the defendants 2 days after the last day for filing of the defence but before judgment in default was sought to be entered. The statement of defence admitted the contract with the plaintiffs and that any progress payment received by the defendants was to be made over to the plaintiffs within 7 days of receipt but less 6%. The statement of defence denied that there was a sum of RM44,7555.10 received by the defendants. It was also contended that the plaintiffs' works had been unsatisfactorily carried out.

The plaintiffs' solicitors took out a summons under O. 14 and in their affidavit in support thereof produced a photocopy of the cheque showing that the defendants had received RM44.755.10. It was further contended that such payment would not be made if the plaintiffs' works were unsatisfactory. The Senior Assistant Registrar allowed final judgment to be entered. Both the defendants and their solicitors were absent at the hearing.

The defendants changed solicitors and moved for the judgment to be set aside on the grounds that:

(i) the previous solicitors had not been briefed on the defence to be filed and hence the defence was filed without the authority of the defendants and should not be held against the defendants;

(ii) there was a fraudulent contract in that the terms were typed on to a blank document on which a partner of the defendants had put down his signature.

Held:

[1] Generally, a solicitor on record is authorised to act in all matters which may reasonably be expected to arise for decision in the proceedings.

[2] The settling and filing and delivering of the statement of defence falls well within what has to be done by solicitors who have the conduct of the case. Since M/s. P & Co. were duly appointed by the defendants the plaintiffs were entitled to rely on the admissions and concessions made in the statement of defence.

[3] With respect to the allegation of fraud, the defendants' story did not sound plausible - there was no explanation as to how the plaintiffs were in possession of a blank paper with a partner's signature on it and why the plaintiffs should have commenced work and be paid more than 25% of the lump sum contract price without there being a concluded contract.

[4] In any case, since the statement of defence was binding on the defendants, the defendants were estopped from stating that their defence should have been otherwise.

[Application dismissed with costs.]

Cases referred to:
Prestwick v. Poley 18 CBNS 806
In re Carruthers v. Newen [1903] 1 Ch 812
Waugh v. H.B. Clifford & Sons [1982] 1 All ER 1095
Swinfen v. Lord Chelmsford 157 ER 1436

For the defendants/applicants - Cecilia Fernandez; M/s. C. M. Fernandez & Co.
For the plaintiffs/respondents - Manjit Singh Sachdev; M/s. Manjit Singh Sachdev & Co.

JUDGMENT

VC George J:

The plaintiffs' claim arose from the alleged breach of terms of an alleged written contract. Service of the writ and statement of claim was, on the 16 August 1982, duly effected on the defendants on whose instructions a firm of advocates and solicitors duly entered an appearance. Since the name of the firm of solicitors is similar to that of at least one other firm they will be referred to in the judgment as M/s. P & Co. Although the statement of defence had to be filed not later than the 6 September 1982, it was only on the 8 September 1982 that the said firm of solicitors, M/s. P & Co., filed a statement of defence purportedly for and on behalf of the defendants. This was done before judgment in default was sought to be entered. The statement of defence stated that the defendants admitted that there was that written contract between the parties whereby in effect the plaintiffs were to carry out certain works the defendants had contracted to do for what apparently is a government (or quasi-government) department at Serdang. The statement of defence conceded that any progress payment for the job received by the defendants was to be made over to the plaintiffs within 7 days of receipt but less six percentum which was admitted to be the "defendants' share". It was also conceded by the statement of defence that in the event the defendants failed to make any such payment of progressive payment received to the plaintiffs, the plaintiff were entitled to "stop work immediately"

There was a denial of the plaintiffs' contention that an amount of RM44,755.10 had been received by the defendants by way of progress payment. It was also contended that the works carried out by the plaintiffs was not done "in a proper manner and/or to the satisfaction of the defendant and/or the principal".

The plaintiffs took out and served on the said firm of solicitors a summons under O. 14 and in their affidavit in support thereof referred to and relied on the admissions and concessions made in the statement of defence and went on to demonstrate by the production of a photocopy of the actual cheque that the defendants had been paid the RM44,755.10. And it was contended that the payment would not have been made had the principal not been satisfied with progress of the work. This, it seems to me, puts paid to the contention that the money had not been paid and that the work had not been carried out to the satisfaction of the principal.

When the O. 14 application came on for hearing before the Senior Assistant Registrar on 14 April 1983, the defendants and counsel for the defendants were both absent. The learned Senior Assistant Registrar went on to hear the application and it can be seen from the terms

of the order made by her [encl. (10) in the file] that it was upon reading the summons and the affidavit in support and upon hearing Counsel for the plaintiffs that she allowed final judgment to be entered for the plaintiffs as prayed.

The defendants changed their solicitors and moved the Court by their application now before me dated 30 June 1983 to set aside the said judgment of 14 April 1983. The application was supported by the affidavit of one Raja Luthfi bin Tengku Badli Shah a partner of the defendant firm. By that affidavit the deponent stated *inter alia* that he had left it to one Yong Yit Chong who apparently was familiar with the relevant facts to brief the firm's solicitors on the defence to the action. He said that neither Yong nor anybody else, had specifically briefed the solicitors on the defence to be filed. What seemed to have happened was that when two letters by those solicitors to the defendants were not responded to (Raja Luthfi says he never received them) the said P & Co., without specific instructions to do so filed the statement of defence the contents of which have been referred to earlier in this judgment.

Raja Luthfi went on to state that the written contract dated 15 February 1982 exhibited as LCK1 in support of the plaintiffs' O. 14 application for summary judgment was a fraudulent document and that para. 3 and 4 of the statement of claim should never have been admitted. What the statement of defence should have been, he says, is as shown in an exhibit to his affidavit.

Counsel for the defendants argued that the contents of the statement of defence should not be held against the defendants on the ground that it was filed without the authority of the defendants.

Now a solicitor on record is authorised generally to act as the client's authorised agent in all matters which may reasonably be expected to arise for decision in the proceedings. As early as 1865 in *Prestwick v. Poley* 18 CBNS 806 at 816 Sir Montague Smith said,

> The attorney is the general agent of the client in all matters which may reasonably be expected to arise for decision in the cause.

In that case the Court went to far as to say that the authorities seem to suggest that the attorney has the power (without specific instructions to do so) to even compromise the action in a fair and reasonable manner. The judgment of Montague Smith J was cited with approval by Farwell J in 1903 in Newen, *In re Carruthers v. Newen* [1903] 1 Ch 812. More recently Brightman LJ in the Court of Appeal in *Waugh v. H. B. Clifford & Sons* [1982] 1 All ER 1095 cited with approval that part of Montague Smith J's judgment and further pointed out that "both Lord Esher M. R. and Bowen LJ had adopted the formulation of Pollock C.B. in *Swinfen v. Lord Chelmsford* 157 ER 1436 that the barrister has complete authority over the conduct of the "cause and all that is incidental to it" but not over "matters that are collateral to it".

There can be no question but that the settling and filing and delivering of the statement of defence falls well within what has to be done by solicitors who have the conduct of the case for a defendant.

It is not disputed that M/s. P & Co., were duly appointed by or on behalf of the defendants for the conduct of the matter in respect of which a writ had been served on the defendants and which by the Rules called for the entering of an appearance and for the filing and servicing of a statement of defence. On the authorities and on principal the defendants were

and are bound by thee statement of defence filed on their behalf. In the event the plaintiffs were entitled to rely on the admissions and concessions made in the statement of defence and the Senior Assistant Registrar was perfectly justified in allowing the Order 14 application.

For the defendants it is now contended that the terms of the written contract relied on by the plaintiffs were not agreed to by or an behalf of the defendants and that those terms were without the consent and knowledge of the defendants typed on to a blank document on which Raja Luthfi had put his signature. Raja Luthfi does not explain why and how the plaintiffs were in possession of a blank paper with his signature on it and why the plaintiffs should have commenced and carried out the contractual works to such an extent that the first progress payment which represented more than 25% of the lump sum contract price was paid without there being a concluded contract between the plaintiffs and the defendants. Raja Luthfi's story does not sound plausible at all.

However that may be of academic interest only since in my judgment the contents of the statement of defence filed by M/s. P & Co. are binding on the defendants and they are accordingly estopped from stating that their defence should have been otherwise was filed by M/s. P & Co.

The application is dismissed with costs.

Also found at [1986] 2 CLJ 63